

UNITED STATES FEDERAL COMMUNICATIONS COMMISSION

IN THE MATTER OF:)

RESORT AVIATION SERVICES, INC.,)

and)

KOOTENAI COUNTY COEUR D'ALENE)
AIRPORT)

Docket No.: WT 02-179

FCC-0ALJ RCD

AUG 23 2 34 PM '02

Volume: 1
Pages: 1 through 38
Place: Washington, D.C.
Date: August 13, 2002

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 KOOTENAI COUNTY COEUR D'ALENE)
 AIRPORT)

Room TWA 363
 Federal Communications
 Commission
 445 12th Street, Southwest
 Washington, D.C. 20554

Tuesday,
 August 13, 2002

The parties met, pursuant to the notice, at
 9:35 a.m.

BEFORE: HONORABLE ARTHUR STEINBERG
 Administrative Judge

APPEARANCES:

For Resort Aviation:

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For Kootenai County:

JOHN CAFFERTY, Esq.
 Kootenai County Department of Legal Services
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For FCC:

DANA LEAVITT, Esq.
 Chief, Enforcement Bureau, FCC

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P R O C E E D I N G S

(9:35 a.m.)

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JUDGE STEINBERG: We are on the record now. This is a prehearing conference in WT docket number 02-179, involving the mutually-exclusive applications of Resort Aviation Services, Inc., and Kootenai -- is that how to pronounce it?

MR. CAFFERTY: Kootenai.

JUDGE STEINBERG: Kootenai?

MR. CAFFERTY: Right. As if it had an A-Y on the end of it.

JUDGE STEINBERG: Okay. And I am going to garble that forever, so you are going to have to excuse me. And Kootenai County Coeur d'Alene Airport, for an aeronautical advisory station at Coeur d'Alene Airport in Hayden, Idaho.

The hearing designation order was released on July 2, 2002. And it has not been published in the Federal Register yet, although I have been assured that it has been sent over for publication, so it may be published within the next week.

By order released July 5, 2002, the case was assigned to me, and an initial prehearing conference was scheduled for today. By order released August 9, 2002, I granted Resort's motion to allow it and Kootenai to participate in this conference by speakerphone.

1 Let me first take the appearances of counsel. For
2 Resort Aviation Services, Inc.? Now, Mr. Reed, you have to
3 say your name.

4 MR. REED: My name is Scott Reed. I am
5 representing Resort Aviation Services, Inc.

6 JUDGE STEINBERG: For Kootenai County Coeur
7 d'Alene Airport?

8 MR. CAFFERTY: This is John Cafferty. I represent
9 Kootenai County..

10 JUDGE STEINBERG: And for the Chief Enforcement
11 Bureau.

12 MS. LEAVITT: Dana Leavitt.

13 JUDGE STEINBERG: Okay. Did you all hear that?

14 MR. REED: Yes.

15 JUDGE STEINBERG: Okay. If you have any trouble
16 hearing, let me know.

17 First thing I want to do is review what is pending
18 in terms of pleadings. And then we will get to what we need
19 to do to file pleadings later.

20 I have got basically, I believe, four things
21 pending. Well, three things. The first is a motion to
22 enlarge issues filed on July 23, 2002, by Kootenai. Other
23 copies were filed on July 29 and July 30, 2002.

24 Kootenai seeks an issue as to whether Resort had
25 an unusually poor record during its last license term. An

1 opposition was filed by the Enforcement Bureau on July 31,
2 2002. And it was served by fax on everybody, so a reply was
3 due to be filed on July 30.

4 Let me ask Mr. Cafferty, was any reply filed?

5 MR. CAFFERTY: No, Your Honor. No reply was
6 filed. And as a point of clarification, I have spoken with
7 the Enforcement Bureau. And I have taken her objection to
8 heart, and I anticipate filing an amended motion to enlarge.

9 JUDGE STEINBERG: The rules do not provide for
10 that. But if you want to file it, file it, and then we will
11 deal with it.

12 Basically you get, if you want to file a new
13 petition to enlarge, that is fine. But if you file an
14 amendment or a supplement or whatever, it is going to
15 probably be dismissed unless you can show good cause for its
16 not being filed in the first instance. But if you file it,
17 then I will hear any, I will take into consideration any
18 objections, and I will rule appropriately at the appropriate
19 time.

20 The next thing we have is Kootenai County's motion
21 for exemption from fees and charges filed on July 29, 2002.
22 And another copy was filed on July 30, 2002. This pleading,
23 according to the certificate of service, was not served on
24 the Bureau counsel.

25 Let me just note for the record that a request for

1 waiver of fee must be ruled on by the Office of Managing
2 Director, not by me. And I would refer you to Section
3 0.231(a) of the Commission's Rules. So do not expect any
4 ruling from me on that. And whether the Managing Director's
5 office has a copy of it or not, I really do not know,
6 because it was not directed to him.

7 The next thing we have, we had a motion to enlarge
8 issues filed on July 31, 2002, by Resort. And an affidavit
9 of Fred M. Miller in support of the motion to enlarge
10 issues, also filed on July 31, 2002, by Resort.

11 Resort seeks an issue as to whether it had an
12 unusually good record during its license term. The
13 Enforcement Bureau filed a response on August 5, 2002,
14 supporting Resort's motion. The Bureau's response was
15 served by fax, so any reply to that was due on August 12.

16 And let me ask Mr. Reed if he filed a reply.

17 MR. REED: I did not file a reply. No, sir.

18 JUDGE STEINBERG: Okay, I will rule on that one in
19 due course.

20 Let me just say, when I say filed, let me define
21 filed. Filed to me means that there is a copy of it
22 floating around in the Commission with an official received
23 stamp from the Commission's Office of Secretary, or from the
24 mailroom. If I cannot find a copy of a pleading with that
25 official stamp on it, as far as I am concerned it has not

1 been filed. And if it has not been filed, I, I cannot rule
2 on it.

3 So it is very important that what you all do is,
4 is file stuff in an appropriate manner, so that it gets, it
5 gets to the people and it gets those stamps. And I will go
6 over how to do that later.

7 Actually, why don't I do it now? Let me ask.
8 Each of you has a copy, has copies of the Enforcement
9 Bureau's pleadings, don't you? Mr. Reed?

10 MR. REED: Yes.

11 JUDGE STEINBERG: And Mr. Cafferty?

12 MR. CAFFERTY: Yes, Your Honor.

13 JUDGE STEINBERG: Okay. So here is what I want
14 you to do. And the Bureau's pleading has a caption on it.
15 Let me see if I can find one in my -- here we are. It has
16 got a caption on it.

17 And at the bottom of the caption, at the end of
18 the names of the parties it says, there is a thing that
19 says, "To authorize Steinberg, Administrative Law Judge."
20 That has got to be on everything you file in this case, if
21 it is directed to me, otherwise it will not get to me.

22 As far as I know, nothing that you have filed in
23 this case has gotten to me through official sources. By
24 official sources, I mean delivered in the mail, in the
25 Commission's interoffice mail. If you do not have my name

1 on it, Lord only knows where it goes.

2 The copies that I have were basically printed from
3 the Commission's database. They have an electronic filing,
4 an electronic comment filing system, whatever -- OCFS. And
5 they are supposed to, what do they call that, photocopy or -
6 -

7 MS. LEAVITT: Scan them in.

8 JUDGE STEINBERG: Yes, they scan in copies of
9 everything, and they organize it by docket number. And I
10 went into the electronic, OCFS last week, and had my legal
11 technician print out everything that had a Secretary stamp
12 on it. To the best of my knowledge, I have not received any
13 of these things in the Commission's mail, so I do not even
14 know where they are. And I am going to rule based, I am
15 going to rule on these motions because I have copies that
16 were officially filed.

17 Okay. So a lot of your captions, they have some
18 numbers up in the upper right-hand corner. Take those
19 numbers out; those do not mean anything. Those are
20 reference numbers to the order assigning me as Judge. So
21 just take the Bureau's caption and copy it.

22 The name of your pleading should be below my name.
23 Where you see Enforcement Bureau's response to whatever.
24 That is where the name of the pleading ought to be.

25 Okay. So, if you need rule references as to why

1 this stuff has to be done, including my name on there I will
2 refer you to 1.209 of the Rules and 1.291(a)(4) of the
3 Rules.

4 Another thing that you have to do is file a
5 separate pleading for each different request. Do not
6 combine requests into one pleading. In other words, do not
7 say petition to enlarge issues, and request for conference
8 by speakerphone. You know, if you have a petition to
9 enlarge issues, file it as a petition to enlarge issues. If
10 you have a request for speakerphone, that is a separate
11 pleading, and file it that way. And I would refer you to
12 1.44 of the Rules.

13 MR. REED: Judge Steinberg, can I ask a question?

14 JUDGE STEINBERG: Sure.

15 MR. REED: If we follow the format that
16 Ms. Leavitt has put forth, is that the correct format to
17 follow?

18 JUDGE STEINBERG: Yes, that is the format you
19 should follow.

20 MR. REED: Okay, fine. Thank you, sir.

21 JUDGE STEINBERG: The next thing is, when you
22 file, you have to file an original and six copies. And that
23 is 1.51(a) of the Rules. Since these are going to an
24 Administrative Law Judge in a hearing proceeding, that is
25 the appropriate number. What happens to them, I really do

1 not know. They probably throw out three of the four copies.
2 But the Rule says an original and six, so we file an
3 original and six.

4 Now, the next thing is when you calculate dates
5 for filing pleadings and due dates for responses, and due
6 dates for replies, use Section 1.294 of the Rules. That is
7 the rule that we use in hearing cases. Do not use 1.45 of
8 the Rules. That is just, that is a general rule, and 1.294
9 is the one that governs hearing cases.

10 Now, if you refer to 1.294, I think it is (c), (b)
11 and (c). Essentially, if you are filing an interlocutory
12 pleading, no reply is permitted. With the exception of the
13 types of pleadings listed in subsection (c) of 1.294. So if
14 it is, if it is a pleading that is specifically listed in
15 1.294(c), then you can file a reply. Otherwise, there is no
16 reply permitted.

17 That is in general. Some of the Commission's
18 discovery rules are more specific. And where a rule is more
19 specific than 1.294 and allows a reply, then you can file a
20 reply. But that is in the discovery rules section.

21 The next thing is you have to serve copies of all
22 pleadings, all correspondence on Bureau counsel. And I
23 refer to 1.47(c) and 1.211 of the Rules.

24 Now, when I say pleadings correspond, obviously
25 pleadings that come to me have to be served on Bureau

1 counsel. But let's say you two, for argument's sake, are
2 having settlement negotiations, and you are having an
3 exchange of letters. Well, you might want to serve those on
4 Bureau counsel, and you might not. It just depends on the
5 nature of them.

6 If it is nothing that I have to rule on, then I
7 think, if it is things that you want to keep confidential,
8 then I would think that you could, you could not serve those
9 on the Bureau counsel. And certainly, I do not want
10 anything relating to settlement, unless a settlement is
11 reached.

12 So if it is an officially-filed pleading or
13 correspondence sent to the Commission somewhere, you have to
14 serve Bureau counsel. And if you take a look at Bureau
15 counsel's certificate of service, that is the form that you
16 can use for that.

17 The next thing I want to talk about is how to get
18 things to me or to us, us meaning the Commission.
19 Essentially, the U.S. Mail is pretty unreliable, in terms of
20 if they decide that they are going to, what do they call --

21 MS. LEAVITT: Irradiate?

22 JUDGE STEINBERG: -- irradiate the mail, then it
23 might be a month before it gets to us, or more. And if they
24 decide not to, it could get to me in a week, or get to the
25 Commission in a week.

1 Let me ask. I had my legal technician fax each of
2 you a couple weeks ago a public notice that gave various, it
3 is a two-page public notice which gave various addresses at
4 which to send things if you were sending them by certain
5 methods. Did you both get that?

6 MR. CAFFERTY: I believe -- this is John Cafferty,
7 Your Honor. I believe I received it. I am looking through
8 my file right now.

9 JUDGE STEINBERG: Okay. There would have been an
10 arrow. I think I made arrows next to, on either side.
11 There is a chart on the bottom of page one.

12 MR. CAFFERTY: Yes, I think we both received it.

13 JUDGE STEINBERG: Okay. As far as I know, these
14 addresses are still good. Obviously, you are out in Idaho,
15 and you are not going to have your messenger bike over here
16 and hand-deliver stuff.

17 MR. CAFFERTY: No.

18 JUDGE STEINBERG: So I think we can ignore the
19 Massachusetts Avenue address. However, you know, one of you
20 might contact like a Washington, D.C. law firm, and it might
21 be possible for you to fax things over and have them
22 hand-deliver it. But that is up to you. If that is what
23 you do, then you would use that Massachusetts Avenue
24 address.

25 Other messenger-delivered documents, here they are

1 talking about Federal Express and things of that nature, not
2 U.S. Postal Service Express Mail or Priority Mail, those go
3 to East Hampton Drive in Capitol Heights, Maryland. That is
4 what I would suggest that you use.

5 Generally, that stuff goes there and comes over
6 here within the next day or two. And they, I do not know
7 who puts the official stamp on it, but somebody does.

8 If you want -- I cannot tell you not to put
9 something in the mail. But if you do put something in the
10 mail, then you have got the Twelfth Street address. But I
11 would suggest that you use the, like, FedEx or another
12 service of that nature, and send things to the East Hampton
13 Drive address.

14 In addition to that, please fax me a copy of
15 everything that you file, be it a letter of a pleading.
16 That is the only way that I am going to know for sure that I
17 should be getting something. And that way I will look out
18 for it. And if it does not come in, I will send, I will
19 send my legal technician out to look for it. But if you fax
20 me a copy of everything, that will be greatly appreciated.
21 And what is my fax number: (202) 418-0195.

22 Okay. This would include any discovery requests
23 and responses. If you look at the Rules, there are
24 provisions for request for production of documents and
25 interrogatories. And I do not think, I do not think they

1 have to be filed with the Commission any more; they are just
2 sent directly, served directly from, let's say Resort to
3 Kootenai, and vice-versa.

4 But please fax me a copy and send Ms. Leavitt a
5 copy, or fax her a copy. That way I am able to keep up with
6 what is going on in the case. And if there are responses or
7 objections, send those, also.

8 If there is a request for production of documents,
9 I would like a copy of the request, and I would like a copy
10 of the response. But it is not necessary to send me the
11 documents. I do not want the documents. That is, I do not
12 know if the documents, in a case like this, will be small a
13 number or large a number. But whatever they are, I do not
14 want them, because I will not look at them anyway. And you
15 can, we can save a lot of paper. Do you understand that?

16 MR. CAFFERTY: Yes.

17 JUDGE STEINBERG: Okay. Now, the next thing I
18 want to talk about -- okay. Those are generally the rules.
19 I have summarized the rules on how to file things, and the
20 format it has to take, et cetera. Do you have any
21 questions?

22 MR. CAFFERTY: This is John Cafferty, Your Honor.
23 I just have one question for clarification.

24 All of the procedural rules are governed by the
25 specific FCC Rules, and the Federal Rules of Civil Procedure

1 then would not apply to this proceeding?

2 JUDGE STEINBERG: Correct. Right. We do not use
3 the Federal Rules of Civil Procedure at all. Although if
4 the Commission's Rules do not provide for something, I might
5 go to them as guidance, but I am not, I am not bound by
6 that. You know, generally I will do what I think is, is
7 fair to both parties.

8 Especially when you get into the discovery rules,
9 there are, there are specific time frames within which
10 things have to be done, and within which responses have to
11 come in. And who they go to, and who they are addressed to.
12 Motions to compel, and things like that. There are very,
13 very specific rules with respect to those.

14 Generally, there is a section in the Rules called
15 Hearing Procedures. It is in Part One, I think. Let me
16 look in the index. Yes, it starts with Section 1.201. And
17 those are generally the rules that we use, 1.201 through
18 1.364.

19 Okay. Let me ask, turn to discovery and let me
20 ask, Mr. Reed, is there any discovery contemplated?

21 MR. REED: Yes, Your Honor, there is discovery
22 contemplated. We talked about that a bit before we called
23 you. I would anticipate that we, Resort, would want to take
24 three or four depositions of persons here. And that would
25 probably be preceded by some written interrogatories and

1 requests for production. I do not think it is a large
2 amount, but there would be something I think would be
3 something that would consume some period of time.

4 JUDGE STEINBERG: Okay. How about Mr. Cafferty?

5 MR. CAFFERTY: Likewise, Your Honor. Kootenai
6 County would anticipate some written discovery, and
7 following up with the affiant of Mr. Reed, and possibly some
8 depositions on those.

9 JUDGE STEINBERG: Okay. Do you have any idea how
10 long this is all going to take?

11 MR. CAFFERTY: We did some discussion about that,
12 and I think, given questions about availability of parties
13 and witnesses and so forth, I think we anticipated maybe two
14 to three months. If that fits within your schedule, sir.

15 JUDGE STEINBERG: Well, we will see about that.
16 Okay. Let me just make a general statement with regard to
17 discovery. And that is, I suspect there are going to be
18 differences between the two of you as to scope and nature of
19 discovery. And I want you to please make a good-faith
20 effort to work out your differences between yourselves.

21 And I want it to not only be a good-faith effort,
22 but I want it to be a genuine effort to reach a compromise.
23 In all likelihood, if you come to me for a ruling, one or
24 both of you is not going to like the ruling that you get
25 from me. And so it would be a lot better for you to work it

1 out and reach an accommodation that you are both unhappy
2 with.

3 And I do not want you to come to me for a ruling
4 on a discovery matter without first attempting to reach an
5 agreement.

6 In this connection, if you request a ruling
7 relating to a discovery matter, in your pleading I want you
8 to certify that a good-faith genuine attempt was made to
9 resolve the dispute between yourselves, but that the attempt
10 was unsuccessful.

11 If you do not have a certification of that nature,
12 I just might throw out the pleading. And then you will have
13 to start from scratch. And if the clock is ticking, that is
14 too bad.

15 Okay, any questions about that?

16 MR. REED: No. I would anticipate -- this is
17 Scott Reed. I would anticipate that we would not have that
18 kind of problem.

19 JUDGE STEINBERG: Okay. I hope you are right.

20 MR. CAFFERTY: And I would concur with Mr. Reed.

21 JUDGE STEINBERG: I hope you are right. There is
22 a provision in the Rules which does not relate to a case of
23 this nature. It is 1.48(d), (1) through (3). And that
24 concerns -- I will have to find it. It says, "This
25 paragraph applies to broadcast proceedings only."

1 Is this a broadcast proceeding?

2 MS. LEAVITT: I do not think so, Your Honor.

3 JUDGE STEINBERG: Okay. I did not think so,
4 either. But, because when they, when they wrote this rule
5 in, they were talking about, they were absolutely inundated
6 with FM applications. And this was an attempt to streamline
7 that whole process. And I do not think they were inundated
8 with applications for Unicom stations.

9 MS. LEAVITT: No, because this came out of a
10 private wireless, you know, the wireless bureau. And to me,
11 broadcast would have come out of mass media.

12 JUDGE STEINBERG: Right.

13 MS. LEAVITT: That is how I have been associating
14 it.

15 JUDGE STEINBERG: Okay. So I cannot -- okay.
16 This essentially provides a set of rules where we could, we
17 could have written direct cases. Where instead of having
18 witnesses come on and testify for hours, and maybe days, the
19 witnesses' testimony, all of the witnesses' testimony was
20 reduced to writing and presented in the form of an affidavit
21 or declaration, under penalty of perjury. And the
22 testimony, the written testimony was exchanged on the
23 exhibit exchange date.

24 And then essentially, the witness takes the stand.
25 And counsel basically says, is this your affidavit? And the

1 witness says yes. Do you want to make any changes? The
2 witness says no, or there is a typo, or I forgot something.
3 So they add something. And then counsel says I offer
4 Exhibit 1, and is there any objection. We would hear
5 objections. And then the exhibit is received, and then the
6 witness is turned over for cross-examination.

7 It also makes it much easier for counsel to
8 prepare for the witnesses, because they have seen the
9 testimony in advance.

10 And essentially what I would like you to do is
11 think about that. Think about reducing your direct written
12 cases into writing. And if you can do what I strongly
13 encourage you to do -- I cannot order you to do it, but if I
14 could order you to do it, I would. So maybe you can take a
15 hint.

16 When I, I will issue an order at the end, when
17 this conference is over, basically memorializing the
18 procedural dates that we are going to set. And I already
19 have the footnote written where I strongly encourage you to
20 do this. So that is something for you to think about, and
21 it would certainly streamline the hearing. And it would,
22 would also eliminate a lot of, a lot of time.

23 I have got a set of tentative dates. And this is
24 August 13. Do you think you could complete discovery by the
25 end of October? I have got a date of October 28.

1 MR. REED: I would think so. Scott Reed.

2 MR. CAFFERTY: This is John Cafferty.

3 JUDGE STEINBERG: Yes.

4 MR. CAFFERTY: If Your Honor says we need to get
5 it done by then, I can get it done. I do have a trial set
6 to start that week, on the 28th.

7 JUDGE STEINBERG: Okay. Well, that is good,
8 because everything will be finished by the 28th.

9 Why don't I set it for the 28th? And all the
10 dates flow from that. And if we, if we wind up having a
11 problem, then I will entertain a motion to change the dates.

12 And when I, let me also tell you, this is going to
13 be the date for completion of all discovery. And let me
14 explain what I mean by completion. It is very simple. That
15 means everything has got to end that day. It is not the
16 date for you to file your last motion, although it could be
17 the date when you take the last deposition. But everything,
18 by close of business that day, has to be finished.

19 If you are filing interrogatories, or a motion to
20 compel, it has got to be filed in sufficient time for me to
21 rule on it, so that you can do what you have to do and
22 finish by October 28.

23 Now, by saying that, I recognize that on
24 occasion -- and I have seen this personally, and I have done
25 it personally -- on occasion counsel can kind of play games

1 with the discovery deadlines by raising objections and
2 filing pleadings, and just stretching it out and stretching
3 it out and stretching it out, so that it makes it almost
4 impossible for his opponent to finish by October 28.

5 If I perceive that that is going on, I will extend
6 the date, or I will just put the hearing off. Because I do
7 not want somebody to deprive, to be deprived of their
8 discovery rights by somebody else playing games. So let me,
9 let me end it at that. I am not saying that you will, but I
10 am saying please do not. And if I perceive that you are
11 playing games, you are not going to get anywhere by playing
12 the games.

13 The next date I have is November 4, 2002, which
14 will be the date for the exchange of direct case exhibits.
15 Direct case exhibits, stipulations, and a list of witnesses,
16 if any, to be called for oral testimony.

17 Essentially, if you have got documentary evidence,
18 that is the date that you exchange it with everybody else.
19 And November 4 is when everything has to be received by
20 everybody else. So that it should be put in, let's say in
21 FedEx or whatever, so that it gets to both me and
22 Ms. Leavitt and opposing counsel on November 4.

23 The list of witnesses you call for oral testimony,
24 just list the people. And I think by that time you all
25 should know what the testimony is going to be.

1 If you decide to reduce your direct cases through
2 written form, then you would exchange those on the date set.
3 And you would not have to list those individuals as
4 witnesses, because they really would not be offering any new
5 testimony.

6 Oh, I also have a big, long footnote as to the
7 form that I want the exhibits to take. And essentially,
8 essentially it is the exhibits should be labeled. Resort
9 Exhibit 1, Kootenai Exhibit 1, et cetera. Put that in the
10 upper left corner.

11 The second exhibit would be Number 2, and the
12 third Number 3. If you want to use, if you are happy using
13 A, B, C, D, you can use A, B, C, D, I do not really care.
14 But just every exhibit should have a number.

15 If you are going to request official notice of
16 any, of any materials, you should assemble them in written
17 form, and identify them by source, and give them an exhibit
18 number or letter. And they have to be exchanged, too.

19 This is very important, and this is one of my pet
20 peeves. Stick a page number on every page of your exhibit.
21 Start with page one. If you have a cover sheet, the cover
22 sheet does not have to be numbered. But the substantive
23 exhibits, start with page one, Exhibit 1, page one, and then
24 label it -- let's say it is 10 pages, one through 10. Put a
25 number on every page.

1 And if it is a typewritten, let's say if it is a
2 letter and it is four pages, and there are numbers on each
3 page, fine. But if there is, if it is a letter and it is
4 four pages, and it has got five pages of attachment, you
5 know, number the last five pages pages five through
6 whatever. But very important. Because when we have
7 witnesses on the stand, and you say direct your attention to
8 Exhibit 3, page 12, I want everybody to be on the same page.

9 And I am really, I hate it when exhibits come in
10 and they do not have numbers on it, on each page. And each,
11 number each exhibit separately. So Exhibit 2, start with
12 page one. Exhibit 3, start with page one. I had one
13 instance where somebody numbered like three volumes of
14 exhibits, and they used the Bates stamp, and just went
15 through, you know, 1,000 pages of exhibits. But at least
16 each page had a number on it, so that was okay.

17 Also, when you exchange the exhibits, I want an
18 index. And in the index I want the title of the exhibit,
19 the number of pages contained in each exhibit, and who is
20 going to sponsor the exhibit. So that, you know, I know who
21 is going to -- if testimony is necessary, I know who is
22 going to testify on it. And if a couple people are going to
23 testify, then list those people, too.

24 The next date -- any questions about that?
25 Mr. Reed?

1 MR. REED: No.

2 JUDGE STEINBERG: Mr. Cafferty?

3 MR. CAFFERTY: No.

4 JUDGE STEINBERG: Okay. The next date I have is
5 November 12, 2002. And this is the date by which you notify
6 each other and the Bureau and me as to which witnesses you
7 want to actually physically appear at the hearing for
8 cross-examination. And the Bureau would notify you as to
9 which witnesses they want.

10 If you are going to have 10 witnesses, and for
11 instance Mr. Reed says I only want A, B, and C, then you do
12 not have to produce, you do not have to bring to the hearing
13 the other seven of them. Of course, and their exhibit would
14 be accepted without cross-examination. And that, that can
15 save time, and it can save money.

16 And the same thing for Mr. Cafferty. If you only
17 want D, E, and F, then Mr. Reed has only got to have D, E,
18 and F in the courtroom.

19 You can make such notification by telephone or
20 fax. But if you make it orally, you have to confirm it in
21 writing.

22 Any questions on that, Mr. Reed?

23 MR. REED: I have no questions.

24 JUDGE STEINBERG: Mr. Cafferty?

25 MR. CAFFERTY: Just to clarify what I think I

1 understand here. On November 12, I get to say which of
2 Mr. Reed's witnesses I wish to have present to
3 cross-examine, is that correct?

4 JUDGE STEINBERG: Correct.

5 MR. CAFFERTY: Okay.

6 JUDGE STEINBERG: And he, and Ms. Leavitt and,
7 Ms. Leavitt does the same thing with both of your witnesses.
8 And Mr. Reed would notify you as to which of your witnesses
9 he wants here. And, which is another reason for putting
10 your direct cases in writing. We might be able to save on
11 the cost of, of having people come to Washington and putting
12 them up.

13 Now, the next date is November 18, 2002. And let
14 me see, what day is that? That is on a Monday. And that is
15 commensurate with a hearing at 9 a.m. here at Washington,
16 D.C. at the Commission's offices.

17 MR. REED: Judge, Scott Reed.

18 JUDGE STEINBERG: Yes.

19 MR. REED: I have a major problem on that. I have
20 a trial that starts on November 18. Can we change that
21 date?

22 JUDGE STEINBERG: To when?

23 MR. REED: It goes on for a week.

24 JUDGE STEINBERG: Well, the 25th is Thanksgiving
25 week, and I would hate to ruin anybody's Thanksgiving.

1 MR. REED: In December, would that be possible?

2 JUDGE STEINBERG: Well, I usually take a lot of
3 December off. Of course, that is, I do not use any vacation
4 time the whole rest of the year, so I am gone most of
5 December.

6 MR. REED: January?

7 JUDGE STEINBERG: Yes. January, then we have got
8 to, then I am going to flip, I am going to --

9 MS. LEAVITT: I am not opposed in principle. The
10 only thing I have in January is I have got two weeks where I
11 am going to Charlottesville. I am going to teach --

12 JUDGE STEINBERG: Okay. What week is good for you
13 in January? I am talking to Ms. Leavitt.

14 MS. LEAVITT: I will be there probably over the
15 20th, like it will be the second and third week of the month
16 of January.

17 JUDGE STEINBERG: Okay. Let me --

18 MS. LEAVITT: So we can start early in January, if
19 you want to do it that way.

20 JUDGE STEINBERG: Well, okay. Now, unfortunately
21 my book does not go that far. And the book that I have a
22 January calendar in -- well, maybe -- oh, here we go. Okay,
23 I found one. I have got one.

24 Okay, so you -- yes, sure. Let me just say
25 Ms. Leavitt is looking at my 2003 calendar. Okay. Would

1 you be able to prepare for something on the 27th?

2 MS. LEAVITT: Yes.

3 JUDGE STEINBERG: Okay. Well, let's make it
4 January 27, 2003.

5 MR. REED: Totally satisfactory. Thank you,
6 Judge.

7 JUDGE STEINBERG: And then I am going to change
8 the other dates. Although if you are going to be gone, then
9 you will not be able to do notification.

10 MS. LEAVITT: The other dates that you have listed
11 are fine, if you want to keep those.

12 JUDGE STEINBERG: Yes, but I hate to waste -- I
13 mean, essentially, have everything to go on November 12, and
14 then wait two months for the hearing? I mean, you may as
15 well give --

16 MS. LEAVITT: Give them a little time to work.

17 JUDGE STEINBERG: -- give you the benefit of the
18 time. That way you will not start --

19 MS. LEAVITT: Right.

20 JUDGE STEINBERG: -- discovery until two months
21 later. At least if you work the way I work, you do not do
22 anything unless you have to.

23 (Laughter.)

24 JUDGE STEINBERG: I probably should not say that
25 on the record.

1 (Laughter.)

2 MR. REED: You have been around a long time, sir.

3 JUDGE STEINBERG: I have been around, yes, a very
4 long time.

5 Okay. How about if I make notification January 6?
6 Or make it the end of the week, January 10?

7 MS. LEAVITT: Mm-hmm. That is notification of
8 cross-examination of witnesses?

9 JUDGE STEINBERG: Yes, yes.

10 MS. LEAVITT: Okay.

11 JUDGE STEINBERG: And then, let's see, that is a
12 Friday. And then if we go back, why don't we do, why don't
13 we do exhibit exchange December 20? Is that going to screw
14 up anybody's Christmas?

15 MR. REED: No.

16 MS. LEAVITT: I do not think so.

17 JUDGE STEINBERG: Because I do not want to, that
18 is the last thing I want to do is screw up somebody's
19 Christmas. So I do not want anybody's family to be mad at
20 me.

21 MR. CAFFERTY: You are far enough away, I am sure
22 you are safe.

23 JUDGE STEINBERG: Well, who knows? You know, you
24 have got a lot of militia people out in Idaho.

25 (Laughter.)

1 MR. REED: We ship them to Pennsylvania.

2 JUDGE STEINBERG: That is even closer. Okay. I
3 guess if they are not in Idaho, they are in Montana.

4 Unless you want to make it the 13th. Why don't we
5 make it the 13th? That is December 13.

6 MS. LEAVITT: Yes, December 13?

7 JUDGE STEINBERG: Yes.

8 MS. LEAVITT: That is better.

9 JUDGE STEINBERG: And then we will make the end of
10 discovery about November -- well, do you want to make it
11 December 6? Yes. Okay.

12 So here are the new dates. And if this is --
13 December 6 will be completion of all discovery. December 13
14 will be the exhibit exchange. January 10 will be
15 notification of witnesses. Actually, why don't we make
16 notification December 20? Yes, make that December 20. And
17 that way people who have to come might be able to get a
18 better fare because it is a month, the hearing is a month
19 away.

20 Okay, so December 20 for notification of witnesses
21 desired for cross. And January 27 at 9 a.m. for the
22 hearing. Is that agreeable to everybody?

23 MR. REED: Scott Reed. That is very agreeable to
24 me.

25 JUDGE STEINBERG: Mr. Cafferty?

1 MR. CAFFERTY: Yes, Your Honor, that will work.

2 JUDGE STEINBERG: And Ms. Leavitt?

3 MS. LEAVITT: Sounds fine, Your Honor.

4 JUDGE STEINBERG: Okay. Let me just also say that
5 the internal dates, that is other than the hearing date, I
6 would consider fairly flexible. So that if something comes
7 up and you need to change one of those dates, if everybody
8 agrees, I will agree to change it. So there is a little, a
9 little cushion built into those dates.

10 But the hearing date, unless there is some kind of
11 an emergency or something, you know, that will be fairly
12 inflexible.

13 Okay. That takes care of my agenda. Is there
14 anything further that we have to talk about today, Mr. Reed?

15 MR. REED: Not as far as I am concerned.

16 JUDGE STEINBERG: And Mr. Cafferty?

17 MR. CAFFERTY: I have one issue I would like to
18 address.

19 JUDGE STEINBERG: Okay.

20 MR. CAFFERTY: Since Resort Aviation has properly
21 filed its motion to enlarge the issues, and the intention of
22 Kootenai County is merely to respond to the allegations or
23 the assertions made by Resort Aviation, would Kootenai
24 County be allowed to respond to assertions of Resort
25 Aviation without filing its own motion to enlarge issues?

1 JUDGE STEINBERG: Well, okay. Under 1.294, the
2 date by which you -- yes, you can respond. Essentially, you
3 are a party to this case, and the Bureau is a party to the
4 case. And you are entitled to comment or respond to
5 anything filed by anybody.

6 But under 1.294, the Rules, which governs the
7 timing of the response to petition to enlarge issues, your
8 time ran. It says oppositions to -- this is 1.294(c) --
9 oppositions to pleadings in the following categories shall
10 be filed within 10 days after the pleading is filed. And
11 category 1.294(c)(1) is, and it covers petitions to enlarge
12 issues.

13 So his motion to enlarge issues was filed on
14 July 31. And, let me just see, was it faxed around? I
15 think it was faxed. So you would get 10 days from July 31,
16 which, whatever date that is. But it is --

17 MS. LEAVITT: It would be like August 9 or 10, or
18 whatever.

19 JUDGE STEINBERG: So your time is expired for
20 that. I should also have told you about Section 1.4 of the
21 Rules governs how you compute time. And that is a very
22 important rule, which I cannot paraphrase because it just --
23 but it essentially, the important part of that rule is, if a
24 pleading is served by mail, the parties get an extra three
25 days within which to respond. And the three days do not

1 count holidays and weekends.

2 And then if it is, if it is 10 days or more, you
3 get, you count the days, calendar days, straight days. If
4 it is less than something, then you would not count the
5 weekends. It is a complicated rule, which I am not prepared
6 to summarize today.

7 But the important thing is, if a pleading is sent
8 by fax, it is the same thing as being hand-delivered. And
9 you do not get the extra three days. So from a tactical
10 standpoint, if I were you two, I would fax everything to
11 each other, and to Ms. Leavitt.

12 I should also say if you put it in the mail to one
13 of the parties, it is as if it was put in the mail to all
14 the parties, and everybody gets the three extra days. I am
15 not a party, so it does not matter. You know, however it is
16 served on me for calculation of time, I am irrelevant. It
17 is just how it was served on the parties.

18 So that if you mail it to one party, it is as if
19 you mailed it to everybody, and everybody gets the extra
20 three days. If you fax it to everybody, it is as if it was
21 hand-delivered to everybody. So.

22 But anyway, the answer to Mr. Cafferty's question
23 is, the time is expired on that.

24 MR. CAFFERTY: I suppose I did not properly phrase
25 my question. The real issue that I have addressed is, would

1 we have the ability to present evidence and testimony to
2 refute the assertions --

3 JUDGE STEINBERG: Yes.

4 MR. CAFFERTY: -- which Resort Aviation puts
5 forward in their enlarged issues?

6 JUDGE STEINBERG: Okay. Well, you are making an
7 assumption. You are making the assumption that the issue is
8 going to be added.

9 MR. CAFFERTY: Correct.

10 JUDGE STEINBERG: And if the issue is not added,
11 then your question becomes moot.

12 Just because a petition to enlarge is filed, and
13 just because the Bureau supported enlargement of the issues,
14 does not mean I am going to write an order enlarging the
15 issues.

16 But if the issues are enlarged, basically there is
17 going to be time permitted -- this is after the completion
18 of the direct cases, we are going to move into a rebuttal
19 phase, if anybody wants rebuttal. And that will be in a
20 footnote in the order, too, that I issue. Not order T-W-O,
21 it will be in a footnote, also, in the order that I issue.

22 And the footnote basically says rebuttal, if any,
23 will commence after, immediately after the conclusion of the
24 direct cases. So, you know, I would want you to come
25 prepared to the hearing to rebut your opponent's case.

1 Now, if we finish at noon, I might say okay, we
2 will start rebuttal tomorrow morning. I might not make you
3 start immediately after lunch, I might give you half a day
4 to prepare or something. But you should come prepared to
5 the hearing, if you want any rebuttal, to hop immediately
6 into rebuttal. So if there is an issue added, and as a good
7 past record issue added, and they put in evidence on that,
8 then you would be entitled to rebut it.

9 Okay, does that answer the question?

10 MR. CAFFERTY: That was my only question. And
11 with that, I will not be filing any kind of another motion
12 to enlarge the issues.

13 JUDGE STEINBERG: Well, you can if you want to. I
14 mean, I am not going to tell you not to do it. It is just,
15 I will rule on it. I mean, I am not stubborn. I actually
16 do read your pleadings, and I actually do think about them,
17 and I actually do make up my own mind and write my own
18 orders as to how to deal with them.

19 And sometimes I will pick something up and I will
20 say no, there is no way. And then I read it and think about
21 it, and change my mind. So, which is, I suppose, what I am
22 supposed to be doing.

23 Okay. Let me ask Ms. Leavitt, do you have
24 anything further?

25 MS. LEAVITT: Only one thing, Your Honor. And

1 that is to provide the parties with my fax number. Because
2 I think there has been some confusion with the Wireless
3 Bureau.

4 The number, if you want to fax anything to me, is
5 (202) 418-2644, 2644.

6 JUDGE STEINBERG: Did you both get that?

7 MR. CAFFERTY: Yes.

8 JUDGE STEINBERG: Okay. Okay, so I think, then,
9 this is it for the conference. I want to thank you both for
10 getting up so early and starting your day in my courtroom,
11 so to speak. And now I suppose you will go back to bed.

12 (Laughter.)

13 MR. REED: Not quite. And we thank you for not
14 being there.

15 (Laughter.)

16 JUDGE STEINBERG: Okay. So I am going to push the
17 off button. And then if either of you need a conference,
18 let me know, and I will try to talk you out of it. And if I
19 cannot, then I will schedule another conference.

20 I should say something. I am a very strong
21 believer in settlement. And I would encourage the both of
22 you, now that you have got the extra time, to seriously talk
23 about settling this case.

24 This is going to cost your clients a lot of money.
25 And I do not know if this facility is worth the amount of

1 money it is going to cost your clients.

2 In addition, this proceeding, if, if, like I said,
3 I have been around here a long time. If we have the hearing
4 in January, I write my, I am a very slow decision-writer. I
5 take my time, and I try to do anything that I can other than
6 write the decision. And so it is going to take me a long
7 time to write the decision. And whoever loses is going to
8 appeal. And it is going to take the Commission a long time
9 to write a decision.

10 And so you might be talking about years in this,
11 in this particular case. And I do not know that this is
12 worth all this aggravation, because it is going to be
13 aggravating for your clients. And, not to mention the
14 amount of money that they are spending on this.

15 And so I would strongly urge you to see if you can
16 get your clients to settle this case. If you need the
17 facilities, we have, there are provisions in the Rules for
18 the appointment of a Settlement Judge, which could not be
19 me. Although in other cases, with the parties' permission,
20 I have actually acted as sort of the Settlement Judge and
21 talked settlement with both parties, with the understanding
22 that nothing I heard during settlement negotiations would
23 find its way into a decision or a ruling of mine; and that
24 any decision I made ultimately would be based on the record,
25 and not anything I heard privately. And I am very good

1 about honoring my commitments of that nature. And cases
2 have been settled.

3 Sometimes it is easier to talk to somebody who is
4 in a decision-making role as to perhaps the strengths and
5 weaknesses of your cases, and the benefits of settling. And
6 if everybody agrees, then I would be happy to do that in
7 this case. And if, if one of you does not want me to do it,
8 then I absolutely will not. But I urge you to think about
9 that.

10 And I will also tell you that if this case does go
11 to hearing, I am going to insist that a principal that has
12 got decision-making authority for your client be in the
13 courtroom on the, when the hearing opens. Because, before
14 we go on the record, we are going to have a very serious
15 settlement discussion at that time.

16 So you know, you are not going to, you are not
17 going to be able to avoid talking about it, and your clients
18 are not going to be able to avoid talking about it. And
19 sometimes settlements are worked out in the first hour or
20 two of the first morning of the hearing. And everybody
21 walks away happy.

22 Okay. I will get off my pulpit now. Okay, thank
23 you again very much. And we will go off the record at this
24 time.

25 MR. REED: Thank you, Judge.

1 MR. CAFFERTY: Thank you.

2 JUDGE STEINBERG: Thank you. Bye. I talk too

3 much.

4 (Whereupon, at 10:30 a.m., the hearing was

5 concluded.)

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REPORTER'S CERTIFICATE

DOCKET NO.: WT 02-179
CASE TITLE: RESORT AVIATION and KOOTENAI COUNTY
HEARING DATE: August 13, 2002
LOCATION: Washington, D.C.

I hereby certify that the proceedings and evidence are contained fully and accurately on the tapes and notes reported by me at the hearing in the above case before the Federal Communications Commission.

Date: August 13, 2002



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